

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	
)	CSR 8854-E, MB Docket No. 13-286
Petition for Determination of Effective)	
Competition in Seven Washington Franchise)	
Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 2016

Released: March 17, 2016

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC (“Comcast”) has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Comcast is subject to effective competition in the communities listed on Attachment A (the “Communities”). Comcast alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission’s implementing rules,² and that it is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”) and DISH Network (“DISH”). The petition is opposed by the City of Burien and the City of Kent (collectively “the Cities”). Comcast also filed a Supplement in this proceeding.

2. In June 2015, a Commission order adopted a rebuttable presumption that cable operators are subject to one type of effective competition, commonly referred to as competing provider effective competition.³ Accordingly, in the absence of a demonstration to the contrary, the Commission now presumes that cable systems are subject to competing provider effective competition, and it continues to presume that cable systems are not subject to any of the other three types of effective competition, as defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ For the reasons set forth below, we grant Comcast’s petition.

II. THE COMPETING PROVIDER TEST

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multichannel video programming distributors (“MVPDs”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to

¹ 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ See *Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574 (2015) (“*Effective Competition Order*”).

⁴ See 47 U.S.C. § 543(l)(1); 47 C.F.R. §§ 76.905(b), 76.906.

programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁵ This test is referred to as the “competing provider” test. Pursuant to the *Effective Competition Order*, absent evidence to the contrary, the Commission presumes that the competing provider test is met.

A. The First Part

4. The first part of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁶ As explained in the *Effective Competition Order*, “we find that the ubiquitous nationwide presence of DBS providers, DIRECTV and DISH, presumptively satisfies the” first part of the test for competing provider effective competition, absent evidence to the contrary.⁷

5. The Cities argue that the DBS providers have an insufficient effect on the rates of cable providers and that the Commission should reexamine its policies regarding DBS competition.⁸ Comcast responds, and we agree, that the Cities ignore controlling statutory language and two decades of Commission precedent.⁹ The Act unambiguously defines multichannel video programming distributors to include “direct broadcast satellite service.”¹⁰ The Cities also assert that the two DBS providers do not provide comparable programming because they do not offer certain local Public, Educational, and Government access channels (“PEG” channels).¹¹ The “comparable programming” element of the competing provider test does not contain any PEG requirement, but rather, it is met if a competing provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.¹² Moreover, the Cities’ arguments fail to rebut the new presumption of competing provider effective competition because we now presume that DBS providers, DIRECTV and DISH, provide comparable programming.¹³ In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast and the Cities, we thus find that the first part of the test is satisfied.

⁵ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ 47 C.F.R. § 76.905(b)(2)(i).

⁷ *Effective Competition Order*, 30 FCC Rcd at 6580-81, ¶ 8.

⁸ City of Burien and City of Kent Oppositions at 2-4.

⁹ Comcast Reply at 2-4.

¹⁰ *See* 47 U.S.C. § 543(l)(1)(B); *id.* § 522(13). *See also Comcast Cable Communications, LLC In re two Communities in Maryland*, 25 FCC Rcd 13340, 13343, ¶ 13 (2010) (“We have no authority to alter the statute and, therefore, we may not exclude DBS providers from the class of MVPDs that we consider in the competing provider test.”); *Comcast Cable Communications, LLC In re Four Communities in Maryland*, 25 FCC Rcd 12783, 12784, ¶ 6 (2010) (“DBS providers are explicitly included in the statutory definition, and, therefore, we may not exclude them from the class of MVPDs that we consider in the competing provider test.”).

¹¹ City of Burien and City of Kent Oppositions at 2.

¹² *See* 47 C.F.R. § 76.905(g); *see also* Petition at 4-5; *Comcast Cable Communications, LLC In re Six Michigan Communities*, 26 FCC Rcd 3993, 3994, ¶ 5 (2011) (The Commission confirmed that “[t]he rule does not mention PEG channels, and we have repeatedly held that the absence of PEG channels from competing service does not disqualify its programming from being ‘comparable to cable operators’ for purposes of determining effective competition.”); *Cablevision of Oakland, Inc. and CSR TKR, Inc. In re Four Communities in New Jersey*, 24 FCC Rcd 1801, 1803, ¶ 7 (2009) (“The full Commission, when it adopted the definition of ‘comparable programming,’ was fully aware of PEG channels – it discussed both in the same decisions. If the full Commission had wanted PEG channels to be part of ‘comparable programming,’ it would have stated so. It did not.”).

¹³ *Effective Competition Order*, 30 FCC Rcd at 6580-81, ¶ 8.

B. Second Part

6. The second part of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area.¹⁴ As explained in the *Effective Competition Order*, “[w]ith regard to the second prong of the test, we will presume that more than 15 percent of the households in a franchise area subscribe to programming services offered by MVPDs other than the largest MVPD.”¹⁵ The Cities argue that Comcast has failed to demonstrate that its petition is in the public interest.¹⁶ We conclude that a separate public interest showing is not required.¹⁷ The Commission has recognized that the effective competition provisions of the Communications Act “contain[] a clear and explicit preference for [competition].”¹⁸ Comcast’s satisfaction of the effective competition test demonstrates that the public interest will be met through Congress’s preference for competition.¹⁹ For the above reasons, the arguments put forth by the Cities fail to rebut the presumption of competing provider effective competition.²⁰ In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast and the Cities, we thus find that the second prong of the test is satisfied.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, **IS GRANTED** as to the Communities listed on Attachment A hereto.

8. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to or on behalf of any of the Communities set forth on Attachment A **IS REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker

¹⁴ 47 C.F.R. § 76.905(b)(2)(ii).

¹⁵ *Effective Competition Order*, 30 FCC Rcd at 6581-82, ¶ 9.

¹⁶ City of Burien and City of Kent Oppositions at 5.

¹⁷ See *Mediacom Minnesota LLC, Petition for Determination of Effective Competition in Granite Falls, Minnesota*, DA 16-210, ¶ 5 (MB 2016).

¹⁸ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5636 at ¶ 2 (1993); H.R. Rep. No. 102-628, at 30 (1992) (Congress “strongly prefers competition and the development of a competitive marketplace to [rate] regulation.”).

¹⁹ See also Comcast Reply at 4-5 (stating that Comcast has stated “fully and precisely all pertinent facts and considerations relied on” as required by 47 C.F.R. § 76.7(a)(4)(i)).

²⁰ We note that Comcast submitted a Supplement to provide updated occupied household and DBS subscriber figures for the communities of Burien and Kent. The resulting DBS penetration rates are still in excess of the 15% threshold required by the test for competing provider effective competition.

²¹ 47 C.F.R. § 0.283.

Senior Deputy Chief, Policy Division, Media Bureau

ATTACHMENT A

CSR 8854-E, MB Docket No. 13-286

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2010 Census Households	Estimated DBS Subscribers
Burien	WA0539	18.71%	18,388	3,440
Covington	WA0878	21.56%	5,817	1,254
Enumclaw	WA0881	20.75%	4,420	917
Federal Way	WA0544 WA0554	16.21%	33,188	5,379
Kent	WA0065	16.65%	42,626	7,099
Maple Valley	WA0882	16.36%	7,679	1,256
SeaTac	WA0541	17.12%	9,533	1,632

*CPR = Percent of competitive DBS penetration rate.